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**Ex Parte Submission**

Magalie Roman Salas, Esq.

Secretary

Federal Communications Commission

445 12th Street, S.W.

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Application of SBC Communications Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-4*

Dear Ms. Salas:

This letter responds to the March 20, 2000 ex parte submission filed with the Commission by Covad Communications Company. Covad's letter is replete with misstatements and factual errors. SBC Communications submits this letter in order to clarify facts that are already in the record before this Commission, but that Covad's ex parte has ignored and attempted to obscure.

SBC believes it important to place Covad's misrepresentations in their proper context. Covad has advertised itself as the nation's leading CLEC DSL provider. As such, Covad's participation in the review of SBC's application dates back to the collaborative process before the Texas PUC, and Covad has been a full participant at every stage. Covad has filed extensive comments and replies before the Texas PUC and this Commission. Covad also has extensive experience with Southwestern Bell Telephone Company's ("SWBT") systems for provisioning xDSL-capable loops. According to Covad affiant Christopher Goodpastor, for example, Covad has been providing xDSL services in Texas since August 2, 1999. Although Covad thus could not claim to be unfamiliar with the evidentiary record before this Commission, Covad has seen fit to raise issues that plainly ignore that record. At this late date in the proceedings, Covad's attempted obfuscation is inexplicable at best.

SBC's Application Was Complete as Filed: Covad asserts that SBC's application was not complete when filed, claiming that SWBT had yet to implement a series of changes to its processes and procedures for ordering xDSL-capable loops as of the date of SBC's January 10, 2000 application. In support of this allegation, Covad cites to an Affidavit that Carol Chapman filed with the Texas PUC on December 15, 1999, in which SWBT committed to implementing

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these xDSL system enhancements. Covad simply ignores extensive documentation that SWBT had implemented every single one of these commitments by the date on which SBC filed this application.

In an ex parte submission dated March 10, 2000, SBC cited to Carol Chapman's December 15, 2000 Affidavit, and to various other parts of the record, to clarify the extent of SWBT's system enhancements. As described in the letter introducing SBC's ex parte, SBC's record citations to the xDSL-related commitments that SWBT expressly undertook at the Texas PUC's December 16, 1999 Open Meeting were "non-exhaustive." By the time SBC filed this application some three-and-a-half weeks later, SWBT had implemented all of those commitments. SBC's January 10, 2000 application clearly documents SWBT's achievements. As Carol Chapman's Affidavit explains, SWBT had "*committed to and then implemented* a series of enhancements to its pre-ordering, ordering, and provisioning processes." Carol Chapman Aff. ¶ 6 (emphasis added) (App. A-2, Tab 2). Among other things, SWBT agreed on December 16th to: "eliminate its Selective Feeder Separation binder group management system"; "provision loops that have a theoretical loop length of 12,00 feet or less without requiring the manual loop qualification process"; "permit CLECs to purchase loops on an 'as is' basis, whether or not the loop meets the parameters of any particular xDSL technology"; and "offer cooperative acceptance testing on a per-loop basis to any interested CLEC." Id.

The statements made in Carol Chapman's December 15, 1999 Affidavit to the Texas PUC prior to our federal 271 filing were indeed prospective in nature, as SWBT had not then implemented the changes to which it formally committed the following day. But as explained in the affidavit that Carol Chapman filed with this Commission, by the time SBC filed this application, Southwestern Bell had implemented the pre-ordering, ordering, and provisioning enhancements to which it had committed on December 16, 2000. Southwestern Bell's January 4, 2000 Accessible Letter, submitted as Attachment F to Carol Chapman's Affidavit, documents each of these enhancements. Id., Attachment-F ("This information is intended to inform CLECs of the options *currently available* to them.") (emphasis added).

SWBT Allows CLECs to Order xDSL-Capable Loops on an "As Is" Basis: Covad additionally alleges that SWBT continues to reject its xDSL-capable loop orders for failure to meet internal SWBT standards. Again, Covad's allegation is demonstrably false. SWBT offers CLECs a multitude of ordering options. Chapman Aff. ¶¶ 33-46. CLECs can choose to collapse the loop qualification and ordering process into a single step, or, alternatively, can await the results of loop qualification before placing an order. Among the variants of the "one step" option, CLECs can order xDSL-capable loops "as is." Id. ¶ 42. "This eliminates the need for CLECs to send supplemental LSRs in cases where a loop may not meet current industry standards." Id. at F-5 (Jan. 4, 2000 Accessible Letter). Whether or not the available loop satisfies industry protocols for the specified PSD mask, when a CLEC orders a loop "as is," SWBT goes forward with provisioning of the copper loop irrespective of the loop qualification results. No additional CLEC action is needed for loops ordered "as is." SWBT requires CLECs to supplement a valid order only if the CLEC has stated that it desires a loop that fits the relevant industry standards for the type of service the CLEC envisions providing. Id. ¶ 41.

Covad regularly orders loops on an “as is” basis, and cannot claim that it is unfamiliar with SWBT’s provisioning process. Indeed, SWBT’s records reflect that Covad used the “as is” process on March 20, 2000 – the very day that Covad suggested in its ex parte that no such process existed. Covad’s actual ordering behavior thus belies its accusations, and demonstrates that Covad’s alleged “concern[.]” over artificial order rejections is pure fiction. To the extent that Covad must supplement a valid xDSL-capable loop order, it is only because Covad has often chosen not to order the loop “as is.” Any resulting delay is of Covad’s own making.

SWBT Has Been Providing Acceptance Testing Since the Fall of 1999: Covad also claims that CLECs have lacked any mechanism for ordering cooperative acceptance testing prior to March 14, 2000. Covad fails to mention that SWBT had been voluntarily providing cooperative acceptance testing to data CLECs under interim interconnection agreements long before SWBT filed this application. As documented in the Affidavit of Timothy D. Swearingin, SWBT has performed acceptance testing on behalf of Covad and NorthPoint Communications since the Fall of 1999. (Attach. B to Carol Chapman Reply Aff.). Covad does not attempt to rebut Swearingin’s testimony. In fact, Covad has regularly requested and SWBT has provided cooperative acceptance testing for Covad xDSL-capable loop orders. Thus, Covad’s actual experience refutes the claim that CLECs have lacked a mechanism for ordering acceptance testing. SWBT’s March 14, 2000 Accessible Letter merely reiterated SWBT’s established procedures.

SWBT’s OSS Enhancements Were Rolled Out on the Promised Date: Finally, Covad has alleged that SWBT has failed to meet the deadlines for rolling-out OSS enhancements specified in SBC’s Plan of Record. As described in that OSS Plan of Record, SWBT has developed and put in place a series of enhancements to its OSS relating to xDSL-capable loops. One of these enhancements – electronic access to loop design information via DataGate and Verigate – was scheduled to be rolled-out on March 18, 2000. SWBT did indeed begin offering CLECs mechanized access to certain loop make-up information on that date. However, the response to this functionality was even greater than SWBT foresaw, resulting in some requests “timing out.” SWBT made immediate adjustments to its system to expand capacity, adding database connections and memory. As a result, the “timing out” problem has been fully resolved.

Throughout these proceedings, SWBT has documented its full compliance with the requirements for Section 271 approval. SWBT has submitted hard evidence detailing that SWBT has fulfilled every prerequisite articulated by this Commission. In response, CLECs have continually submitted unfounded accusations. Covad’s most recent ex parte stands as a stark example of this pattern. It also stands in stark contrast to Covad’s actual experiences with SWBT’s nondiscriminatory systems. As the record in these proceedings unequivocally demonstrates, SWBT’s application should be approved.


The original and two copies of this letter are enclosed. Please let me know if you have any questions about this matter.

Magalie Roman Salas, Esq.

March 24, 2000

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Sincerely,

A handwritten signature in black ink, appearing to read "Austin C. Schlick". The signature is fluid and cursive, with the first name "Austin" and last name "Schlick" clearly distinguishable.

Austin C. Schlick

cc: Mr. Jennings  
Ms. Rosenworcel  
Ms. Stephens  
Ms. Wright  
Ms. Farroba, Texas PUC  
Ms. Heisler, DOJ  
ITS